

Neil M. Kliebenstein (#226060)
Lucina N. Rios (#325856)
BOWMAN AND BROOKE LLP
1741 Technology Drive, Suite 200
San Jose, CA 95110-1364
Telephone: (408) 279-5393
Facsimile: (408) 279-5845
Neil.kliebenstein@bowmanandbrooke.com
Lucina.rios@bowmanandbrooke.com

Attorneys for Defendants
Takeuchi Mfg. Co. (U.S.), Ltd.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOHN BROWN, an individual,)	Case No. 2:21-cv-00392-JAM-DMC
)	
Plaintiff,)	
)	
vs.)	JOINT STIPULATION AND ORDER TO
)	CONTINUE CASE AND AMEND
)	PRETRIAL SCHEDULING ORDER
TAKEUCHI MFG. CO. (U.S.), LTD, a)	
foreign entity; TAKEUCHI MFG, CO. LTD.,)	
a foreign entity; UNITED RENTALS)	
(NORTH AMERICA), INC., a Delaware)	Action Filed: March 3, 2021
Corporation; UNITED RENTALS INC., a)	Trial Date: April 8, 2024
Delaware Corporation; AND DOES 1 through)	
50, INCLUSIVE,)	
)	
Defendant(s).)	

WHEREAS, Plaintiff John Brown, Takeuchi Mfg. Co. USA (“Takeuchi”), and United Rentals (North America) Inc., (hereinafter the “Parties”) jointly file this stipulation to request an order to continue the case and amend the scheduling order.

WHEREAS, Plaintiff filed this action on March 3, 2021, and filed the First Amended Complaint on October 1, 2021. Defendants filed the answers on May 19, 2022.

WHEREAS, on May 20, 2022, Judge John A. Mendez signed the Pretrial Scheduling Order for this matter. (ECF 59). On August 19, 2022, the Parties filed a stipulation and proposed order to extend the deadline to file the initial disclosures and clarifying parties served and the proposed order was granted by this Court. (ECF 60, 61). On November 14, 2022, the Parties filed a joint stipulation and proposed order to continue the case and amend the pretrial

1 scheduling order and the proposed order was granted by this Court. (ECF 67, 68). On
2 November 29, 2022, the parties filed a supplemental joint stipulation and proposed order to
3 change the bench trial date to a jury trial date and the Court granted the proposed order. (ECF 69,
4 70).

5 WHEREAS, on December 30, 2022, Defendant Takeuchi filed a motion to compel
6 Plaintiff's responses to discovery requests and the Court granted Takeuchi's motion on January
7 17, 2023. (ECF 74, 75, 81). On January 20, 2023, Takeuchi filed a motion to compel Plaintiff to
8 provide supplemental initial disclosures and the Court granted Takeuchi's motion. (ECF 82, 84,
9 86). On February 28, 2023, Takeuchi filed a motion to dismiss for failure to comply with the
10 January 17, 2023 order to produce discovery responses and the hearing for that motion was held
11 on April 19, 2023. (ECF 85, 97). On April 20, 2023, the Court ordered Plaintiff to produce
12 discovery responses within seven days to avoid dismissal of the action. (ECF 97). On April 21,
13 2023, Plaintiff filed supplemental initial disclosures. (ECF 98). On April 26, 2023, Plaintiff filed
14 a notice of compliance with the court's April 20, 2023, order to produce responses to the initial
15 discovery set.

16 **GOOD CAUSE EXISTS** to grant the stipulation to continue the case and amend the pre-
17 trial order. Fed. R. Civ. P. 16(b)(4). Despite the Parties due diligence, they will not be able to
18 meet the current scheduling order. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609
19 (9th Cir. 1992). Takeuchi has filed motions to compel Plaintiff to respond to Takeuchi's initial
20 discovery set, a motion to compel plaintiff to supplement his initial disclosures, and a motion to
21 dismiss for plaintiff's failure to comply with a discovery order. Takeuchi has been diligent in
22 serving discovery and investigating the case. It filed motions to compel responses to discovery
23 and supplemental disclosures to obtain information so that it could properly prepare for trial.
24 Takeuchi filed a motion to dismiss when the order compelling Plaintiff to respond to discovery
25 was not obeyed and Co-Defendant United Rentals joined that motion. (ECF 89).

26 Plaintiff supplemented his initial disclosures on April 21, 2023 and responded to
27 discovery on April 26, 2023. Plaintiff's Attorney provided information that he has been ill
28

1 which, in part, delayed discovery responses. (See ECF 67-1). Plaintiff states he is struggling
2 with health problems including persistent viral infections and pneumonia and has been advised
3 he is a long Covid sufferer. (See ECF 67-1). Plaintiff states that his continued health problems
4 and the fact that he is a single practitioner has caused the delay in answering the discovery and
5 supplementing his initial responses. Plaintiff states that he is currently undergoing efforts to find
6 outside counsel to help him handle this matter.

7 Therefore, the parties request the scheduling order be amended and the trial continued so
8 they can follow up on information that has recently been disclosed in discovery and to prepare
9 their expert disclosures.

10 Because all the Parties agree to continue the case and to amend the trial order, none of the
11 parties would be prejudiced if the Court grants this motion. To the contrary, if the court does not
12 grant this motion the parties will be prejudiced. Plaintiff's supplemental disclosures and
13 discovery responses to Takeuchi's first set of discovery has disclosed new information that
14 defendants need to follow up on and investigate. The parties have also been trying to schedule a
15 site inspection that was put on pause until the motion to dismiss was heard and the Parties are
16 currently trying to find a mutually agreeable date. Because of the new information including
17 information relating to medical treatment, damages, and the mechanism of the accident, the
18 parties will have a difficult time meeting the current scheduling order deadlines, especially the
19 current expert disclosures date that is in less than two months. Therefore, granting the proposed
20 order to move the trial and amend the scheduling order will cure the prejudice that the parties
21 may suffer.

22 **Whereas, the current scheduling order is as follows:**

23 Discovery Cutoff Date: 09/15/2023

24 Disclosures of Expert(s) Deadline: 07/21/2023

25 Supplemental Disclosures Deadline: 08/18/2023

26 Dispositive Motion Filing Deadline: 10/27/2023

27 Dispositive Motion Hearing: 01/09/2024 at 1:30 PM

Joint Mid-Litigation Statement Filing Deadline: 14 days prior to close of discovery

Final Pretrial Conference: 02/23/2024 at 11:00 AM

Jury Trial 04/08/2024 at 9:00 AM

The parties respectfully request that the case be continued, and the dates be amended as follows, or to dates convenient for the court:

Discovery Cutoff Date: **12/01/2023**

Disclosures of Expert(s) Deadline: **10/04/2023**

Supplemental Disclosures Deadline: **11/01/2023**

Dispositive Motion Filing Deadline: **01/10/2024**

Dispositive Motion Hearing: **03/26/2024 at 1:30 PM**

Joint Mid-Litigation Statement Filing Deadline: 14 days prior to close of discovery

Final Pretrial Conference: **05/24/2024 at 11:00 AM**

Jury Trial: **07/22/2024 at 9:00 AM**

Dated: May 19, 2023

BOWMAN AND BROOKE LLP

/s/ Neil Kliebenstein

Neil M. Kliebenstein

Lucina N. Rios

Attorneys for Defendant

Takeuchi Mfg. Co. (U.S.), Ltd.

Dated: May 19, 2023

ACQUEST LAW

/s/ Nareshwar Viridi

Nareshwar S. Viridi

Acquest Law Inc.

Attorneys for the Plaintiff

John Brown

Dated: May 19, 2023

GORDON & REES LLP

/s/ Russell Mortyn

Russell M. Mortyn
Attorneys for Defendants
United Rentals (North America)

ORDER MODIFYING PRETRIAL SCHEDULING ORDER

Based on the stipulation of the parties and good cause appearing, the Pretrial Scheduling Order, is **MODIFIED** as follows:

Discovery Cutoff Date: **12/01/2023**

Disclosures of Expert(s) Deadline: **10/04/2023**

Supplemental Disclosures Deadline: **11/01/2023**

Dispositive Motion Filing Deadline: **01/10/2024**

Dispositive Motion Hearing: **03/26/2024, at 1:30 PM**

Joint Mid-Litigation Statement Filing Deadline: 14 days prior to close of discovery

Final Pretrial Conference: **05/24/2024, at 11:00 AM**

Jury Trial: **07/22/2024, at 9:00 AM**

Counsel shall contact Judge Mendez' courtroom deputy, M York, via e-mail at myork@caed.uscourts.gov, prior to filing a stipulation and proposed order to continue the dates set forth in this order.

IT IS SO ORDERED.

Dated: May 22, 2023

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
SENIOR UNITED STATES DISTRICT JUDGE